

NOT INCLUDED
IN BOUND VOLUMES

HGB
Pahoa, Hawaii

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
PUNA GEOTHERMAL VENTURE

Employer

and

Cases 20-RC-078220

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 1260

Petitioner

DECISION AND CERTIFICATION OF REPRESENTATIVE

The National Labor Relations Board, by a three-member panel, has considered objections to an election held May 14, 2012, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 11 for and 8 against the Petitioner, with no challenged ballots.

The Board has reviewed the record in light of the exceptions and briefs, has adopted the hearing officer's findings¹ and recommendations, and finds that a certification of representative should be issued.²

¹ The Employer has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We have carefully examined the record and find no basis for reversing the findings.

In addition, some of the Employer's exceptions allege that the hearing officer's rulings, findings, and conclusions demonstrate bias and prejudice. On careful

CERTIFICATION OF REPRESENTATIVE

examination of the hearing officer's decision and the entire record, we are satisfied that the Employer's contentions are without merit.

² The Employer's Objections 1 and 2 rest on its contention that Abel Costa engaged in objectionable prounion supervisory conduct. Initially, Members Griffin and Block agree with the hearing officer that the Employer failed to prove that Costa was, in fact, a supervisor within the meaning of Sec. 2(11) of the Act. In particular, they agree with the hearing officer's findings that the Employer's evidence was largely conclusory and that the Employer failed to carry its burden to establish that Costa exercised any of the Sec. 2(11) criteria using independent judgment.

Even assuming Costa was a supervisor, Members Griffin and Block further find that the Employer failed to establish that his conduct reasonably tended to coerce or interfere with employees' free choice in the election under the applicable *Harborside* standard governing prounion supervisory conduct. *Harborside Healthcare, Inc.*, 343 NLRB 906 (2004). The sum total of Costa's conduct consisted of a prepetition and a postpetition statement to employee Taylor Sumida, respectively, that "the main thing was to stick together, sign the cards and not to let [Employer] know, because they would retaliate against us," and "everyone's got to stick together", and a third statement to an unidentified group of employees that "we should stick together." Costa worked in the maintenance department and Sumida in the operations department. Because Costa did not exercise direct supervisory authority over Sumida, the first two statements were unobjectionable under *Harborside*. 343 NLRB at 909-910; see, e.g., *Glen's Market*, 344 NLRB 294, 295 (2006), *enfd. sub nom. NLRB v. Family Fare, Inc. d/b/a Glen's Market*, 205 Fed.Appx. 403 (6th Cir. 2006). Similarly, the third statement was unobjectionable. Because the other employees were unidentified, a fortiori, the Employer failed to establish that Costa exercised direct supervisory authority over them. Further, and independent of the foregoing, Members Griffin and Block agree with the hearing officer that none of Costa's statements was remotely like the supervisory conduct that the Board found objectionable in *Harborside*.

In making the above findings, Members Griffin and Block express no view on whether *Harborside* was correctly decided, a matter unnecessary to resolve in this case. Member Hayes finds it unnecessary to pass on Costa's supervisory status, because his conduct would not be objectionable under *Harborside*.

In adopting the hearing officer's recommendation to overrule the Employer's Objection 3, involving an alleged promise of benefits, we agree with the hearing officer that Union Business Representative Brittain made no promise of any kind in his conversation with employees Sumida, Jumalon, and Hara. Rather, the statements at issue were permissible statements regarding the benefits of unionization. We do not rely on the hearing officer's alternate reasoning applying *Midland Nat'l Life Ins. Co.*, 263 NLRB 127 (1982).

IT IS CERTIFIED that a majority of the valid ballots have been cast for International Brotherhood of Electrical Workers, Local 1260, and that it is the exclusive collective-bargaining representative of the employees in the unit found appropriate.

Dated, Washington, D.C., December 14, 2012.

<u>Brian E. Hayes,</u>	Member
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<u>Richard F. Griffin, Jr.</u>	Member
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<u>Sharon Block,</u>	Member
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NATIONAL LABOR RELATIONS BOARD